Supreme Court, U.S.
FILED

(2)

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No: 06-1313

In The

SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER (SUMMER)

Petitioner

v

HSBC BANK USA, (MARINE MIDLAND BANK)

M & T TRUST CO BANK

Respondents

Petition for a Writ of Certiorari
to the New York Court of Appeals

SUPPLEMENT TO

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Pepi Schaffler, BA, MSSS, JD PhD
Petitioner
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SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division , Fourth Judicial Department
CA 05-00465

PEPI SCHAFLER (SUMMER)
Plaintiff-Respondent

v

HSBC Bank USA (Marine Midland Bank)and
MANUFACTURERS & TRADERS TRUST CO
Defendant-Respondent

MEMORANDUM AND ORDER

Appeal from an amended judgment of the Supreme Court , Erie County (P.NeMoyerJ.) entered August 16, 2004 .The amended judgment awarded plaintiff $127.635.26 against defendants It is hereby Ordered that the amended judgment a so appealed from be and the same hereby is unanimously reversed on the law without costs , the motion is denied , the cross motion is granted in its entirety , and the amended complaint is dismissed..

Memorandum: We agree with defendant HSBC Bank USA formerly Marine Midland bank , N.A. that Supreme Court erred in granting plaintiff's motion for summary judgment and instead should have granted in it's entirety the cross motion of HSBC for summary judgment dismissing the amended complaint against it. HSBC established its entitlement to judgment as a matter of law by submitting documentary proof that plaintiff has been fully compensated for the $47,600 withdrawn by her former spouse from their account and plaintiff failed to raise an issue of fact (*see generally Zuckerman v City of New York, 49 NY 2d 557, 562).* In view of our determination herein, we conclude that the amended complaint must be dismissed in it's entirety. (*see generally Hecht v City of New York, , 60 NY2nd 57, 61-62)*

Entered November 10, 2005

JoAnn M.Wahl
Clerk of the Court